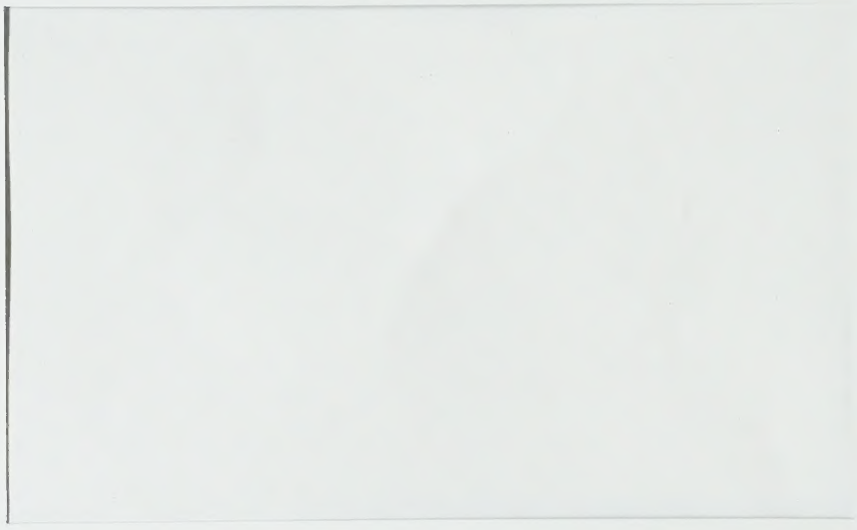
AN ALTERNATIVE DISPUTE RESOLUTION PRIMER AND SURVEY OF CURRENT GOVERNMENT INITIATIVES IN ONTARIO

Current Issue Paper 165



Ontario
Legislative
Library

Bibliothèque de
l'Assemblée législative
de l'Ontario

Legislative Research Service
Room 2520, Whitney Block
99 Wellesley Street West
Toronto, Ontario M7A 1A9

(416) 325-3675
(416) 325-3637
(416) 325-3696 Fax

Service de recherches
Bureau 2520, édifice Whitney
99, rue Wellesley ouest
Toronto (Ontario) M7A 1A9

(416) 325-3675
(416) 325-3637
téléc. : (416) 325-3696

ISSN 0835-0299

AN ALTERNATIVE DISPUTE RESOLUTION PRIMER AND SURVEY OF CURRENT GOVERNMENT INITIATIVES IN ONTARIO

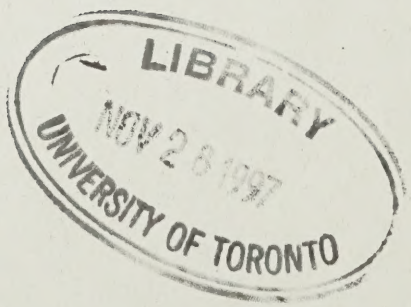
Current Issue Paper 165

Prepared By:

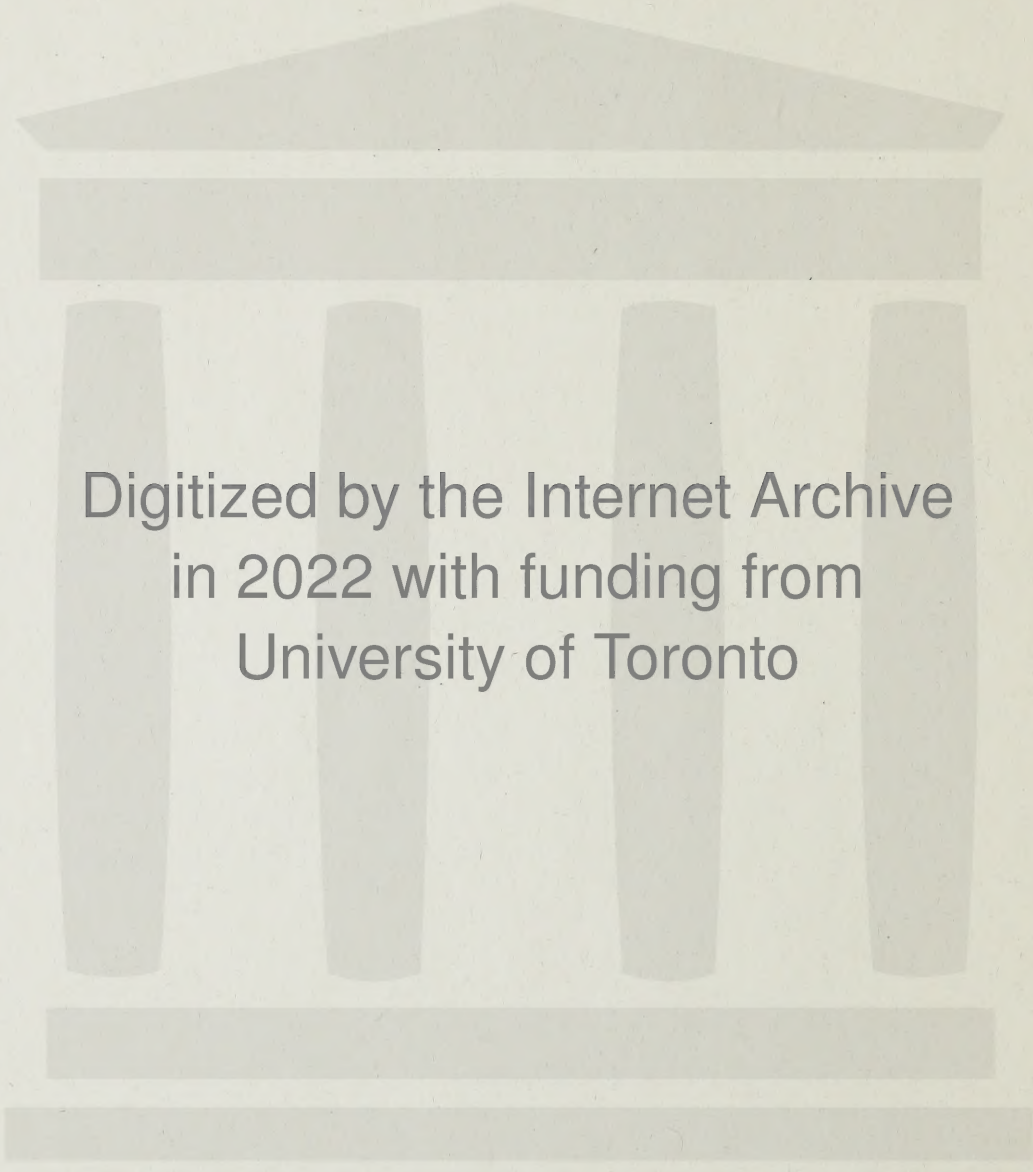
Carolyn Stobo
Research Officer
Legislative Research Service

September 1995

The Legislative Research Service is a branch of the Ontario Legislative Library which provides confidential non-partisan research analysis to Members of all parties of the Legislative Assembly and to legislative committees.



Contents



INTRODUCTION

Interest in alternative dispute resolution, more commonly referred to by the acronym "ADR", has grown steadily over the past ten to fifteen years. The justice systems in Ontario, particularly the civil justice system, have experienced escalating delays and backlogs, rapidly rising public and user costs, and a loss of accessibility and trust.[1] A key part of the problem is seen to be traditional adversarial and adjudicative decision-making processes.

The Honourable Mr. Justice George W. Adams and Naomi L. Bussin have characterized the problems as follows:

> [C]omplaints about the current judicial system . . . include . . . the cost (time and money spent to resolve the dispute); the incomprehensibility of the process (issues related to the lack of participation of the affected parties); and the results (issues related to the imposition of a "remedy" by a "stranger" from a predetermined and limited range of win/loss or "zero-sum" options).[2]

A recent joint Ontario Court of Justice and Ministry of the Attorney General review analyzed these problems as they relate to the civil justice system. In the First Report they have confirmed that "[u]nacceptable delays and mounting costs, with their attendant implications for inaccessibility and mistrust of the system, have become endemic" and, further, that the civil justice system "is in a crisis situation."[3]

A number of proposals for reform have been advanced over the years, both structural (e.g., merging of the courts), and case management and other procedural reforms (e.g., more restrictive time limitations, penalties for default at various stages of a proceeding, and pre-trial requirements). The introduction of ADR processes has also been the subject of considerable discussion.

> . . . [W]hile there is nothing inherently wrong with using adjudication and the judicial process, there is much wrong with using adjudication to solve all problems. The judicial process tends to transform social, political and economic disputes into legal disputes. Not only are some problems ill-suited to a proper or full resolution through the adversarial process, the process may accentuate and exaggerate conflict rather than resolve it. Conversely, the judicial process may diffuse and eliminate disputes that are better expressed as political or economic conflict. Thus,

> the search for alternative dispute resolution processes is perhaps better described as a search to more precisely locate adjudication and in particular judicial adjudication on the continuum of dispute resolution mechanisms. Instead of regarding it as the principal or perhaps even the only effective process for resolving disputes, the search represents an effort to carve out a more limited role for adjudication, and to remedy some of the more obvious inefficiencies of adjudication, while at the same time identifying how and where other less adversarial techniques might be used and expanded.[4]

Generally in Ontario ADR processes, at least to date, have been intended to supplement rather than replace adversarial and adjudicative decision-making processes. A possible exception is in the area of former no-fault benefits and current statutory accident benefits claims under the amendments to the *Insurance Act*,[5] where ADR processes presently occupy centre-stage. This paper provides an overview of the nature and purposes of ADR, as well as the advantages and disadvantages. In addition, the paper surveys how ADR has been viewed in a number of Ontario justice system reviews over the past ten years and highlights some of the ADR initiatives of the Government of Ontario.

NATURE OF ALTERNATIVE DISPUTE RESOLUTION PROCESSES

What is ADR?

The "umbrella term,"[6] alternative dispute resolution or ADR, generally refers to collaborative dispute resolution processes as distinct from adversarial processes involving litigation and adjudication. It encompasses a wide variety of techniques including any one or combination of the following specific processes:

- *Negotiation*: Communication or discussions between opposing parties directed at resolving or reaching an agreement on issues in dispute.

- *Conciliation*: A neutral third party assists opposing parties by conveying information from one to the other, identifying any common ground, and attempting to re-establish more direct communication between the parties.

- *Mediation*: A mutually acceptable, neutral third party provides informal assistance to opposing parties by structuring the negotiations, ensuring communication between the parties remains open, assisting the parties to articulate their needs and interests, and, if the parties desire, making suggestions or recommendations, with a view to aiding the parties in voluntarily resolving or reaching an agreement on issues in dispute.

- *Early Neutral Evaluation*: After a proceeding has been commenced in court, a non-binding meeting is held where a neutral third party (usually a lawyer or judge with expertise in the area) assists opposing parties by reviewing and determining issues in dispute, providing an opinion on the merits of the claims, recommending steps required to proceed and, if requested, encouraging a resolution or agreement on one or more outstanding issues in dispute.

- *Mini-trial*: This is a non-binding mock trial where opposing parties present in summary form their best evidence and arguments to a neutral third party decision-maker selected by the parties. The decision-maker then renders an advisory opinion on the merits of the claims. The parties and their counsel continue settlement negotiations thereafter, including seeking any desired further assistance from the third party.

- *Summary Jury Trial*: This is a non-binding mock trial where opposing parties present in summary form their best evidence and arguments to a jury (that is unaware it is a mock trial) selected by a judge from the jury list. The jury then renders a verdict or decision on the merits of the claims. The parties and their counsel continue settlement negotiations thereafter, including seeking any desired further review of the verdict with the jury.

- *Mediation/Arbitration*: After an unsuccessful mediation, opposing parties may elect to have a neutral third party act as an arbitrator and render a binding or non-binding decision on the merits of the claims.

- *Arbitration*: A mutually acceptable, neutral third party (or parties) holds an informal hearing where the parties present their evidence and arguments. The arbitrator then renders a binding or non-binding decision on the merits of the claims.[7]

Each process may be broken down into sub-categories depending upon whether the process is voluntary, compulsory, non-binding, binding, court-annexed, court-connected, and so forth.[8] Further, the opposing

parties engaged in such processes may enlist the assistance of legal counsel, experts or others at their option at any time.

Simply put, ADR describes "the recent interest . . . [in] finding an alternative to traditional litigation."[9] It is a search for "a more consensual approach to problem solving, more accessible and community-oriented forms of dispute resolution and less expensive, more efficient ways of resolving disputes, . . . [for] a process that generates `win/win' rather than `win/lose' or zero sum results."[10]

The suitability of "court-annexed" ADR, a concept which will be frequently referred to in this paper, has been the subject of a number of recent discussions, particularly in the context of general reform of the civil justice system. Court-annexed ADR exists when one or more processes such as mediation, early neutral evaluation, mini-trials and arbitration are incorporated directly into the court process. In those cases where alternative processes may be more suitable to the resolution of a dispute, court-annexed ADR would permit the parties to pursue these processes voluntarily or, in the absence of the parties' agreement, they could be required to pursue them by a court order prior to taking any further steps in an action or proceeding. The concept of the "multi-door courthouse" encompasses court structures that offer the parties various dispute resolution mechanisms or processes. These range from the adjudication of disputes in a traditional trial setting to the alternative processes noted above.

The Honourable Mr. Justice G. W. Adams and Naomi L. Bussin have made the following observations:

> It is important for the justice system to acknowledge the fact that people want their conflicts *resolved*, but not necessarily *tried*. A tailored solution which the litigants feel is fair and which they design is more satisfying to all concerned. "Legal" cases are not simply about legal issues but rather involve a mix of law, morals, business or family sociology and a high degree of uncertainty as to outcome. The zero-sum response of courts does not, many times, do justice to this rich mix of forces . . .
>
> Moreover, the administration of justice is dependent on the settlement of lawsuits. Nevertheless, while over 95% of all actions settle, our courts are inundated by those trials which do take place. Surprisingly, however, the fundamental importance of settlement to the justice system is not reflected in the traditional court apparatus. At present, court houses only provide court-rooms and judges to try

> cases. No one is provided to help settle cases. Lawyers are left on their own to negotiate settlements in a system geared towards the adversarial methods of dispute resolution. We can do much more to facilitate the important settlement efforts of the profession.[11]

Relationship between the Courts and ADR

In analyzing the relationship between adjudicative and other dispute resolution processes (particularly in the United States where ADR has been widespread for well over a decade), one fundamental question arises. To what extent should judges be required to become "active litigation managers?" The consequences of this might include "ad hoc decisionmaking" during difficult cases, which could "undermine fundamental procedural fairness." It might also lead to "temporary solutions [that] may serve to mask more serious flaws in our dispute resolution methodology." [12]

The debate in the United States has generally been resolved in favour of supporting efforts to improve or expand dispute resolution practices and to grant further flexibility to decision-makers by adopting the "multi-door courthouse" approach, rather than resorting to efforts, for example, that would limit access to the courts.[13]

Ontario commentators, including the Honourable Mr. Justice G.W. Adams and Naomi L. Bussin, have similarly stressed the importance of ensuring an ongoing relationship between ADR and more traditional dispute resolution processes.

> ADR is not some "newfangled idea", but the logical expansion of established practice. Informal resolution of disputes is not new. People have always exercised the right to resolve their disputes outside the public justice system either on their own, with the assistance of third parties of their choosing, or through alternative forums . . . ADR, of course, has been institutionalized by the vast array of public administrative tribunals such as in the labour, transportation and communications, municipal and environmental law fields, in many areas of family law even within the court framework, and by the private sector in the arbitration of commercial disputes. Most importantly . . . ADR programmes and organizations have been successfully established in conjunction with courts in the United States for a number of years . . . What has not yet happened in Canada, however, is the institutionalization of the many

different ADR processes which now exist as an adjunct to the court system in the United States.

> The interrelationship between the courts, the rule of law and dispute resolution cannot be understated. Its importance to a viable democratic society has been underlined by the Supreme Court of Canada [as follows:] ". . . the courts . . . are the forum not only for the resolution of disputes between citizens, but for the resolution of disputes between the citizens and the state in all its manifestations. The more complex society becomes, the more important becomes the function of the courts."
>
> It is precisely this fundamental public function of the courts that makes court-annexed ADR so crucial. Our courts must reflect the growing complexity of Canadian society in the dispute resolution processes they offer to the public. We can no longer take efficient private self-ordering for granted. The law applying efforts of the profession through settlement requires active support. It is not sufficient to provide only one specialized and formal dispute resolution procedure – the trial.[14]

The *First Report* of the *Civil Justice Review* in Ontario further emphasized the importance of fostering a broader dispute resolution approach:

> Civil justice is a foundational institution in our society. . . . [T]he state has an obligation to make available to its members the means by which their disputes may be resolved, peacefully, through the medium of independent, objective and fair third party intervention.
>
> This involves more, in our times, than simply the presence of courts as we have traditionally known them, albeit the adjudicative role of an independent judiciary will remain a central and indispensable aspect of any civil justice system. Experience in our own and most other jurisdictions shows us that the vast majority of all cases settle before trial. We need to focus our attention on the process for disposition of this great majority of cases, as well as continuing to concentrate on those that do go to trial.
>
> In a broader sense . . . the court should become a **"dispute resolution centre"**— a place where people go to have their differences resolved in a fashion which is most appropriate

> to their particular situation. This may involve resort to one or another of the wide panoply of "alternative dispute resolution" . . . techniques that are available, or it may involve resort to the traditional litigation path towards court adjudication. In either case that State, in our opinion, has an obligation to ensure that these options are available to the members of the public.[15] [Emphasis added.]

Pros and Cons

The growing interest in ADR in Canada, both privately and in government circles, has been prompted by the following perceived advantages:

- backlogs and delays associated with traditional judicial and administrative decision-making structures can be reduced, providing for faster and more accessible dispute resolution;
- lower public and private costs associated with dispute resolution;
- tailoring decision-making processes to suit the needs of the parties, thereby providing greater flexibility respecting all or individual issues in dispute;
- ensuring confidentiality and privacy;
- greater capacity to preserve on-going relationships;
- greater participation by the parties in the decision-making process and likelihood of greater satisfaction of the parties and compliance with resolutions;
- a broader range of remedies and solutions can be considered;
- greater public satisfaction with the justice system; and
- ability to obtain binding and enforceable agreements or arbitral awards, subject only in limited circumstances to review by a court.[16]

Disadvantages that have been cited with ADR processes include the following:

- absence of public scrutiny;
- lack of precedent-setting ability;

- unsuitablility of some processes to certain types of disputes (i.e., where a constitutional matter is primarily at issue) and for certain types of disputants (i.e., where domestic abuse is alleged or possibly involved);

- possible lack of commitment of a party or the parties to the process;

- limitations on fact-finding ability and standard evidentiary protections;

- reluctance of many lawyers to support and recommend such processes to their clients given a lack of knowledge of the suitability and possible benefits of the processes to particular disputes or a conflict of interest by reason of a lawyer's personal pecuniary interest in the adversarial litigation process.[17]

It should be noted that many of these perceived disadvantages of ADR have been addressed through design, training or practice restrictions.

Some American critics have seen problems when corporations have instituted arbitration processes without proper planning or commitment.

> [T]he great hopes for ADR faded quickly. Damage awards, legal billings, and the number of lawsuits in the United States continued to rise - even for many of the companies that had embraced ADR. In fact, one study found that rather than reducing costs and delays, at least one form of ADR - court-annexed arbitration - had actually increased them.
>
> . . . ADR as currently practiced (by many companies) too often mutates into a private judicial system that looks and costs like the litigation it's supposed to prevent. At many companies, ADR procedures now typically include a lot of excess baggage in the form of motions, briefs, discovery . . .
>
> . . . a number of companies have learned to use ADR effectively, and those companies are in fact reaping ADR's predicted benefits: lower costs, quicker dispute resolutions, and outcomes that preserve and sometimes even improve relationships . . .

> ADR isn't really all that different from litigation. Because few companies have made a serious commitment to ADR as a distinct system, and because there are very few rules governing it, the procedure is often allowed to become a litigation look-alike.[18]

These analysts also expressed concerns about court-annexed arbitration:

> Adding to ADR's reputation as nothing more than litigation-in disguise is the popularity of court-annexed ADR, which judges in federal jurisdictions often mandate after contestants have already begun to litigate. Not surprisingly, the parties tend to pursue the case as they began it - with a lot of hostility and all the expensive paraphernalia of a lawsuit - despite the judge's admonition to arbitrate. What's more, if either party objects to the arbitration decision, it can take the case back to the judge.[19]

Canadian critics have also voiced concerns with arbitration:

> . . . [T]he alleged cost savings of an arbitration quite often fail to materialize or are not as great as the parties thought they would be. The parties must pay for the space and may also end up paying the hourly fees of the adjudicative panel. In Toronto, the going rate for rent-a-judges is around $300 an hour.
>
> Though clearly seeing ADR's benefits, Montreal lawyer G. B. Maughan has reservations about any costs savings. "ADR can be very productive by resolving disputes quickly, effectively and at low cost. Yet I've found that it can be a costly proposition -- particularly if three arbitrators are paid to resolve the dispute. The parties must pay for this." Maughan also has concerns about potential abuses of hearsay evidence during such hearings . . . "A court's evidentiary rules are designed to present the best proof available as opposed to . . . hearsay evidence . . ."
>
> . . . Kevin McDonald, chair of Nova Scotia's CBA Insurance Law Section, found that persuading other counsel to try arbitration was "harder in practice than in theory" . . .[20]

On the other hand, other American studies on court-annexed ADR processes including arbitration have not expressed such reservations.[21]

Similarly, a 1993 study of arbitration in Ontario, known as the Carson-Graham Commercial Arbitration Survey, compared cases utilizing regular adjudicative processes and arbitration processes, and concluded:

> Arbitration proves even faster and more economical than expected. Parties' control, co-operation and satisfaction is established. From this point, the commercial community can now approach the arbitration process with confidence.[22]

Arbitration is closest to the adjudicative process on the decision-making spectrum, given that both processes engage a third-party decision-maker. Depending upon the issues and amounts in dispute, it would not be surprising if cost and time factors for arbitration were similar to those for adjudication (as opposed to ADR processes such as mediation). This, however, remains merely conjecture. Although some comparisons have been made relating to the cost and time differences between adjudicative and mediation processes as part of the evaluation of pilot projects, comprehensive comparative studies on the various dispute resolution processes, court-annexed and otherwise, are required.

Discussion Of ADR In Recent Civil And Criminal Justice System Reviews

As noted earlier, the basis for the growing interest in ADR has been escalating delays and backlogs, mounting costs and the loss of trust in the civil justice system. Contributing factors have included the following:

- the significant increase in civil litigation;
- the greater complexity of such litigation;
- the increased time required for preparation, settlement and trial of such litigation;
- an "increasingly `rights-oriented' and litigious society;"
- "mass media coverage" publicizing and thereby enhancing the public's knowledge of its ability to seek the enforcement of various rights; and

- the "continuing onslaught of legislation from all levels of government giving people more and more opportunities to go to court."[23]

Taken together, the *Civil Justice Review* went so far as to conclude: "These developments pose serious threats to the civil justice system."[24]

Similar observations have been made respecting the criminal justice system in the context of its ability to resolve or bring outstanding criminal charges to a conclusion in a timely and cost effective manner. Backlogs in some centres have been commonplace. With the Supreme Court of Canada ruling in *R. v. Askov*[25] that an accused has the right to be tried within a reasonable time in accordance with section 11(b) of the *Canadian Charter of Rights and Freedoms*, the then existing crisis in the criminal justice system was brought to a head. As a result of the ruling, a number of then outstanding charges were dismissed or had to be stayed due to unreasonable delay.[26]

What follows is a summary of the comments and recommendations made respecting ADR in various reviews of the civil and criminal justice systems that have been conducted in Ontario over the past decade.

Civil Justice System Reviews

The Ontario Courts Inquiry 1987

The 1987 Report of the Ontario Courts Inquiry (known as the *Zuber Report*) made the following early observations respecting ADR and the civil justice system:

- various mechanisms to resolve disputes outside of courts should be used to spare the parties the high costs of going to court and the trauma of the trial process, particularly in family disputes;[27]

- ADR processes should be regarded only as a part of the total package of services offered by the justice system, with the court remaining the ultimate method of resolving disputes when other methods have been tried and failed;[28]

- steps should be taken to emphasize the concept that resolving issues by resorting to a court is a process of last resort to be invoked only when other methods have been tried and failed, at least in civil cases;[29]

- the successful use of ADR processes can be accomplished only by substantial changes in attitude and the improvement of skills, beginning with the judiciary;[30]

More particularly, respecting family disputes, the observations made were:

- the practice of providing mediation on a voluntary basis extending to issues of custody, access, support, and a division of property, before the commencement of an application, is a worthwhile endeavour holding great promise having the potential to keep the expense of resolving family disputes low and the likelihood of settlement high.[31]

The specific recommendations relating to ADR made by the *Zuber Report* were:

- the suggestion the judiciary set up seminars and continuing legal education programs on the value and operation of alternative methods of dispute resolution and providing instruction on skills involved in conducting effective pre-trial conferences and mediation hearings;[32] and

- amendment of the rules respecting matrimonial cases to provide that, prior to commencement of an application, either spouse can request mediation and mediation services will be offered; if a non-requesting spouse refuses to attend mediation, no sanction should apply.[33]

The Attorney General's Advisory Committee on Mediation in Family Law

Prompted by the recommendations of the *Zuber Report*, an Advisory Committee was established to consider various matters relevant to the mediation of family law disputes. In February 1989 the Committee's report concluded that "mediation in family law has been a positive development" and represents an "alternative means" to the traditional, adversarial method of resolving such disputes.[34] The Committee went on to recommend that a comprehensive mediation model for such disputes be implemented and evaluated in the family mediation pilot project.[35]

The Standing Committee on Administration of Justice

In October 1989, the Standing Committee on Administration of Justice undertook a study of ADR to consider the extent to which public policy in Ontario should develop and encourage alternative processes for resolving disputes both outside and within the judicial system.[36] The Committee's mandate was to initiate research, conduct public hearings and report to the House on various issues including: the current status of ADR in Ontario and Canada; whether the promotion and enhancement of ADR is appropriate for the government of Ontario; whether a proactive government policy would alleviate pressures on the judicial system and expedite the resolution of disputes; as well as canvassing the existing methods available to resolve minor monetary civil disputes.[37]

The Standing Committee's 1990 report recommended that:

- the Ministry of the Attorney General make a careful selection of some important disputes for diversion to ADR techniques;
- the government monitor ADR as it is used in dispute resolution both in the public and private sectors. The function of monitoring ADR programs should be given to a government-established ADR Advocate;
- the government review present and future legislation and build in ADR procedures where they would lead to a less costly and more expeditious resolution of disputes. ADR techniques should be put at the disposal of agencies, boards and commissions in the ways proposed by the *Macaulay Report*[38] (e.g., amendments to the *Statutory Powers Procedure Act* to empower agencies to require parties to attend prehearing conferences, to convene settlement conferences and to convene meetings of the parties to mediate or conciliate issues);
- entry into mediation be voluntary but mandatory information sessions prior to commencement of proceedings be attended by the parties. Mediation should be legislatively encouraged by providing incentives to mediate;
- research be conducted to assess claims that mediation reduces court congestion, saves costs, and has greater agreement compliance, durability and client satisfaction; and to investigate concerns expressed about the process, particularly those involving power imbalance, domestic violence, mediator bias and its ability to ensure that the best interests of the child are met;

- funding be provided to establish new and support existing court-affiliated mediation services to further research on mediation in family law; and

- ADR be used in the resolution of native claims and issues.[39]

The Civil Justice Review 1995

The recommendations made in the *First Report* of the *Civil Justice Review* were more comprehensive than those found in both the *Zuber Report* and the Standing Committee Report. The *Civil Justice Review* recognized the value of ADR processes and mechanisms as a supplement to traditional court-based litigation. The relevant recommendations included:

- ADR options be available to members of the public from both within and outside of the traditional court system;[40]

- the concept of court-connected ADR be accepted in principle, with the determination of the appropriate form of service model and funding option to await the evaluation of the [civil] ADR Centre pilot project and, in family matters, the outcome of the family mediation policy discussions presently in progress;[41] and

- early screening and evaluation mechanisms be built into the caseflow management structure to be implemented in the province."[42]

Ontario Law Reform Commission: Report on the Adjudication of Workplace Disputes

Following an "extensive study of the structure and process of adjudication [of workplace disputes] under the *Labour Relations Act*, the *Employment Standards Act*, the *Industrial Standards Act*, the *Occupational Health and Safety Act*, the *Human Rights Code*, the *Pay Equity Act*, the *Employment Equity Act*, and . . . collective bargaining agreements,"[43] the Ontario Law Reform Commission recently has recommended the following steps to improve the efficiency of various tribunals:

- implementing case management systems and resorting to mediation as part of a system to resolve disputes without the need for a more costly and time-consuming hearing; and

- allowing tribunals to dispose of certain cases without a hearing to enhance the ability of each tribunal to clear up its backlog.[44]

The specific recommendations respecting mediation were as follows:

3. Each administrative regime considered in this report should include, as part of the case management rules, a facility to mediate disputes.

4. Pilot projects in mediation should be undertaken for all of the administrative regimes subject to this report.[45]

Criminal Justice System Reviews

The Ontario Courts Inquiry 1987

In the context of the criminal justice system, the *Zuber Report* initially made the following observations:

> . . . Criminal cases rest on a somewhat different footing. Civil cases ordinarily concern only the parties and if they can resolve their disputes privately, no problem arises. In criminal cases, the participants are not just the accused and the prosecution, the public also has a very real interest . . . the process of resolving criminal cases requires a quality of openness and a compliance with the appearance of justice that is not present to the same degree in civil cases. However,. . . there are still substantial benefits to be gained in criminal cases by an intelligent process whereby steps can be taken to admit the obvious, narrow the issues and even ascertain that an accused may be prepared to plead guilty to some charge or that the Crown may have a weak case.[46]

The Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions

The 1993 Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, respecting "plea bargaining" or resolution discussions in criminal cases, confirmed that:

- resolution discussions are an essential part of the criminal justice system in Ontario, and, when properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally; and

- Crown and defence counsel have a professional obligation to meet prior to trial where appropriate to resolve issues as early as possible. This will reduce demand for court time and ensure that court time scheduled is used efficiently.[47]

In general, it appears that the use of ADR in the resolution of criminal charges in Ontario has not been given as much consideration to date as it has in the civil justice context. There have been site-specific community initiatives and alternative measures or diversion programs, such as those applicable to certain young offenders, to simplify and streamline the criminal justice process. Further innovations of an ADR nature respecting certain types of offenders and charges have been made in other provinces. Newfoundland, for example, has diversion programs involving young offenders charged with property offences, where the offender may have to meet the victim to work out mutually agreeable compensation for the alleged property damage or loss. It should be noted that constitutional and *Canadian Charter of Rights and Freedoms* issues, along with federal-provincial agreements and enforcement arrangements relating to criminal law, may complicate consideration of the use of ADR processes in the resolution of criminal charges.

ONTARIO GOVERNMENT ADR INITIATIVES

The Government or the Courts in Ontario have taken a number of steps over the years to test and introduce ADR processes either on a stand-alone basis or as a supplement to adversarial and adjudicative decision-making processes. This portion of the paper surveys some of these documented efforts, including relevant legislative amendments.

Ministry of the Attorney General and the Courts

The Ministry of the Attorney General and the courts have undertaken initiatives and activities that have introduced a number of ADR processes. Examples include the following:

- then Chief Judge Barry Shapiro, in the County of Peel (now District), encouraged arbitration of certain issues where appropriate;

- then Chief Judge Gordon Killeen, in the County of Middlesex, commenced an experiment to encourage mediated settlements of small claims cases, with local lawyers appointed to conduct the mediations;

- provisions were enacted in the relevant provincial family law and federal divorce legislation authorizing referrals for mediation or other processes, where the parties have consented;

- Rules 54.03 and 20.04 of the *Rules of Civil Procedure* have authorized "references" which might allow for ADR, where the parties have consented or where particular issues are in dispute;

- a Fund for Dispute Resolution was established by the Ministry of the Attorney General, the Donner Foundation and the Law Foundation of Ontario to finance research into alternatives to the traditional litigation process;

- a court-based Family Mediation Pilot Project was established at the Hamilton Unified Family Court in 1991, where mediation services were provided for selected cases rather than traditional adversarial and adjudicative processes. The general conclusions reached in the project's final evaluation report completed in July 1994 were as follows:

  - when compared "with lawyer negotiations and court processing . . . , court based mediation and court processing is somewhat more costly to the public";
  - when compared "with lawyer negotiations, the process of mediation is as satisfying to participants, more effective in enabling participants, especially women, to obtain the support outcomes they want, and less effective in enabling them to obtain the custody outcomes they want";
  - when compared "with lawyer negotiations, mediation makes a greater contribution towards preventing the abuse of separated women by their ex-partners."[48]

- a Case-flow Management Pilot Project commenced operations in Toronto, Sault Ste. Marie and Windsor in 1991. It provided for case management conferences before a judge respecting certain matters on the trial list, enabled judges in the Provincial Division to refer any issue to ADR upon the parties' consent (Rule 3.02(5)(c)) and authorized the establishment of ADR civil and family case panels (Rule 16);

- a practice direction for the Toronto Region developed by Chief Justice F. Callaghan in 1992 contained rules recognizing and encouraging ADR processes as an aid in the disposition of issues and cases on the commercial list. It places a duty on the case management judge and the parties' counsel to explore such methods to resolve contested issues both at case conferences or other times;

- a committee considering dispute avoidance and resolution mechanisms for construction disputes was recently chaired by the Ministry of the Attorney General;[49]

- efforts by the Ministry of the Attorney General to develop proposals for simplified civil procedures relating to claims below approximately $40,000 were undertaken in 1993 and 1994;[50]

- a civil ADR Centre Pilot Project was established in Toronto in the fall of 1994 and is still underway. Cases are selected from the civil list after a statement of defence has been filed, including proceedings involving contract and commercial disputes, wrongful dismissal actions, negligence and other personal injury claims, etc. Matters such as family proceedings, motor vehicle injury, property damage claims and landlord and tenant actions are excluded from the pilot project. The cases are subjected to an assessment and, where appropriate, referred to ADR professionals on staff at the centre or private ADR professionals at the parties' request. The project emphasizes mediation, although other ADR processes including early neutral evaluation and mini-trials are available. If cases that are referred for mediation or other ADR processes do not settle, they are set down for trial. A final evaluation report will be provided upon the project's completion.[51]

A recent Ministry of the Attorney General statement outlined other related ongoing or proposed justice system reform initiatives, including:

- continuing pilot projects for the development of a civil and family case management system;

- beginning the planning and development of a criminal case management system for the Ontario Court (General Division);

- carrying out a review of the civil justice system (the *Civil Justice Review*) in partnership with the judiciary (the First Report was released in March 1995 and the Final Report is scheduled to be completed in late 1995 or possibly 1996);[52]

- embarking on a process of reengineering the court system in collaboration with the judiciary and the bar;

- monitoring and providing feedback on caseflow in each court in Ontario to ensure a timely disposition of cases; and

- continuing to provide training to members of the judiciary, the courts and the crown attorney system in caseflow management techniques.

If the recommendations contained in the *First Report* of the *Civil Justice Review* are adopted by the Progressive Conservative government, subject of course to any changes or further recommendations in the upcoming *Final Report* and budgetary constraints and priorities in justice spending, ADR processes may well be introduced on a court-annexed basis in the family and civil justice systems in the near future.

Ministry of Finance and the Ontario Insurance Commission

Amendments to the *Insurance Act* in Ontario in 1990 provided for the creation of a dispute resolution system, which was to be headed by a Director of Arbitrations and employ specifically-trained staff mediators and arbitrators. The system is an alternative to litigation in the adjudication of disputes about entitlement to, and the amount of, personal injury automobile accident claims (i.e., income replacement and supplementary rehabilitation or medical benefits). Pain and suffering claims and claims related to property damage were not included in the process. The goal of the system is to reconcile the parties' interests and needs.[53]

Once an insurer denies a claim or a portion of a claim, the dispute resolution system requires mediation prior to any resort to arbitration or the courts. Automation and case management, procedures for making claims, the timing and conduct of mediations, the preparation and provision of mediators' reports where issues are not resolved by mediation, and the further courses of action available to the parties where issues are not resolved (i.e., arbitration through the Ontario Insurance Commission or a court proceeding) have been established or set out.[54]

One assessment of the Commission's dispute resolution system concludes there has been:

> . . . general acceptance that the DR process is appropriate in principle, and that its administration is basically headed in the right direction. Its difficulties were acknowledged to derive in part from general government funding problems, and in part from the inevitable growing pains of any new system.
>
> The most difficult issues relate to highly vulnerable claimants who are involved in direct dealings with insurers. While advocacy cannot do much in this context, it is important that steps be taken to protect claimants at this stage, by keeping track of them, by carefully monitoring their exits, by signalling to them that they can protect their interests through the DR system, and by telling them how to seek assistance - including advocacy assistance - in navigating the system.[55]

Ministry of Municipal Affairs and the Ontario Municipal Board

Recent amendments to section 65 of the *Planning Act*[56] authorize, and are intended to foster, the use of ADR in planning applications or disputes:

> s. 65. The Minister, the council of a municipality, a local board, a planning board or the Municipal Board or their agents shall, if they consider it appropriate, at any time before a decision is made under this Act, use mediation, conciliation or other dispute resolution techniques to attempt to resolve concerns or disputes in respect of any planning application or matter.[57]

Prior to this amendment the Ontario Municipal Board, pursuant to the authority in its own legislation and rules, had appointed mediators as well as Board Members. There are presently three mediators on the OMB staff. The OMB will recommend or suggest mediation to the parties to a dispute in appropriate cases.[58]

The Ministry of Municipal Affairs established the Office of the Provincial Facilitator in 1992. The Facilitator's Office has responsibility for:

- speeding up provincial decisions on planning and development projects;

- finding ways to resolve competing provincial concerns between ministries and/or agencies;
- monitoring the effectiveness of all aspects of the streamlining initiative;
- building communication links with all provincial government agencies, municipalities and special interest groups; and
- implementing a one-year pilot project in three cities, starting in April, 1993, involving an initial mediation meeting and such further meetings as appropriate.[59]

CONCLUSION

It is clear there is a growing interest in alternative dispute resolution processes in Ontario, given the widely recognized problems associated with traditional adversarial and adjudicative methods of resolving disputes. This survey of initiatives to date indicates the growing interest in implementing ADR processes in a number of contexts and forms; it is not intended to be a comprehensive review of all ADR initiatives that have been undertaken by the province. Further, when viewed together with the recommendations contained in the various justice reviews completed over the past ten years, it is likely that the momentum behind the implementation of ADR processes, either in conjunction with or in lieu of more traditional processes, will continue to grow.

There have been few evaluations of government initiatives to date. It may be useful, however, to consider recommendations for federal government action made recently by various private dispute resolution professionals in Ontario as well as elsewhere in Canada. A study conducted by The Network: Interaction for Conflict Resolution, funded by the Research Section of the Department of Justice Canada, distributed a questionnaire to those currently engaged in ADR activities across Canada. The report, published in the spring of 1995, summarized the thinking of private dispute resolution professionals in Canada as follows:

> . . . [A] paradigmatic change is needed to encourage the universal acceptability of dispute resolution. Collaborative approaches to conflict should be thought of as a first resort and the societal norm for resolving problems. Such change . . . will be incremental and brought about by conducting demonstration, pilot and

model projects, obtaining endorsements, experimenting, promoting, providing workshops, and teaching the media.[60]

As for the role of the federal government, the following recommendations by private dispute resolution professionals were contained in the report:

- the federal government should "make it common practice to write dispute resolution contingencies into contracts and business agreements" and should "show a preference for [alternative] dispute resolution when it is party to a dispute appropriate to this model;"

- the Justice Department should "facilitate an information and technical support exchange;"
- the Justice Department should "develop a policy to use conflict resolution as a first-resort mechanism in the legal system;" and

- the Justice Department should fund "pilot studies and model projects," "investigate new approaches" to dispute resolution, as well as "promote cultural adoption."[61]

NOTES

[1] Ontario, Civil Justice Review (Hon. Robert A. Blair and Sandra Lang, Co-Chairs), *Civil Justice Review*: *First Report* (Toronto: The Review, March 1995), p. 3.

[2] George W. Adams, and Naomi L. Bussin, "Alternative Dispute Resolution and Canadian Courts: A Time For Change" *Advocates' Quarterly* 17:2 (May 1995): 142.

[3] *Civil Justice Review*, p. 3.

[4] D. Paul Emond, "Alternative Dispute Resolution: A Conceptual Overview", in *Commercial Dispute Resolution: Alternatives to Litigation*, D. Paul Emond, ed. (Aurora: Canada Law Book Inc., 1989), p. 4.

[5] R.S.O. 1990, c. I-8, as amended by Bill 164, the *Insurance Statute Law Amendment Act, 1993*, S.O. 1993, c. 10.

[6] The Law Society of Upper Canada, Dispute Resolution Subcommittee (Lloyd Brennan, Chair), *Final Report to Convocation,* Approved by Convocation February 26, 1993 (Ontario: The Society, 1993), p. 1.

[7] The various dispute resolution processes currently available have been comprehensively defined by a number of individuals, organizations, committees and review bodies over the years. The summary definitions in this paper have been adapted from those formulated by the Law Society of Upper Canada, Dispute Resolution Subcommittee, the Ontario Standing Committee on Administration of Justice and the Canadian Bar Association Task Force on Alternative Dispute Resolution. Reference should be made to the following sources for a full understanding of the particulars of each process: Law Society of Upper Canada, Dispute Resolution Subcommittee, *Final Report to Convocation*, *Short Glossary of Dispute Resolution Terms*, at *Appendix A*, pp. A-55-64; Ontario, Legislative Assembly, Standing Committee on Administration of Justice, *Alternative Dispute Resolution 1990* (Toronto: The Committee, 1990), at *Appendix F*, pp. F 1-4; and Canadian Bar Association, Task Force on Alternative Dispute Resolution (Bonita J. Thompson, Q.C., Chair), *Report of the Canadian Bar Association Task Force on Alternative Dispute Resolution: A Canadian Perspective* (Ottawa: The Canadian Bar Foundation, 1989), at p. 5.

[8] *Final Report to Convocation*, pp. A-56-63. See also "Alternative Dispute Resolution and Canadian Courts: A Time For Change", pp. 136-141.

[9] D. Paul Emond, "Alternative Dispute Resolution: A Conceptual Overview", p. 2.

[10] Ibid., p. 3.

[11] "Alternative Dispute Resolution and Canadian Courts: A Time For Change", pp. 145-146.

[12] Francis E. McGovern, "Toward a Functional Approach for Managing Complex Litigation," *University of Chicago Law Review* Vol. 53 (1986): 441.

[13] Ibid., p. 492.

[14]"Alternative Dispute Resolution and Canadian Courts: A Time For Change", pp. 133-134.

[15] *Civil Justice Review*, p. 7.

[16] David G. Scalise and Jeffrey E. Engels "Alternative Dispute Resolutions: A Commercial Guide for Dispute Management", *Advocates' Quarterly*,Vol. 9 (1988): 55-56; "Alternative Dispute Resolution and Canadian Courts: A Time For Change", pp. 141-146; and Standing Committee on Administration of Justice, *Alternative Dispute Resolution, 1990*, pp. 8-12.

[17] Marc Huber, "Legal Update: Alternative Dispute Resolution", *Canadian Lawyer* 19:1 (January 1995): 41-43.

[18] Todd B. Huber, and Albert A. Vondra, "Alternative Dispute Resolution: Why It Doesn't Work and Why It Does", *Harvard Business Review* 72:3 (May-June 1994): 120-121, 123.

[19] Ibid., pp. 123-124.

[20] "Legal Update: Alternative Dispute Resolution", p. 42.

[21] Wayne D. Brazil, "A Close Look at Three Court-Sponsored ADR Programs: Why They Exist, How They Operate, What They Deliver, and Whether They Threaten Important Values", *University of Chicago Legal Forum* (1990): 303-397.

[22] John C. Carson, William C. Graham and Wayne C. Carson, "Arbitration: The Proof of the Pudding", *Business and the Law* 11:3 (April 1994): 5.

[23] *Civil Justice Review*, p. 3; John C. Carson, "Dispute Resolution: Negotiation, Mediation and Arbitration in Ontario", *The Advocates' Society Journal* (October 1992): 11.

[24] Ibid.

[25] [1990] 2 S.C.R. 1199 (S.C.C.).

[26] J. Sopinka, "What Can We do to Make the Current System of Dispute Resolution Work Better?", *Canada-United States Law Journal* Vol. 17 (1991): 520-521.

[27] Thomas G. Zuber, *Report of the Ontario Courts Inquiry* (known as the *Zuber Report*), (Toronto: Queen's Printer for Ontario, 1987), pp. 200-201.

[28] Ibid., p. 201.

[29] Ibid., pp. 201-202.

[30] Ibid., p. 202.

[31] Ibid., pp. 212-213.

[32] Ibid., p. 202.

[33] Ibid., pp. 212-213.

[34] Ontario, Advisory Committee on Mediation in Family Law (Michael G. Cochrane, Chair), *Report of the Attorney General's Advisory Committee on Mediation in Family Law* (Toronto: The Committee, February 1989), pp. 20, 6-15.

[35] Ibid., pp. 16-19.

[36] Ontario, Standing Committee on Administration of Justice, *Alternative Dispute Resolution, 1990*, p. 1.

[37] Ibid.

[38] Ontario, Management Board of Cabinet (Robert W. Macaulay, Chair), *Directions*: *Review of Ontario's Regulatory Agencies* (known as the *Macaulay Report*), (Toronto: Queen's Printer for Ontario, 1989).

[39] Ontario, Standing Committee on Administration of Justice, *Alternative Dispute Resolution, 1990*, pp. 37-38.

[40] *Civil Justice Review*, p. 222.

[41] Ibid., p. 223.

[42] Ibid.

[43] Ontario Law Reform Commission, *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes* (Toronto: The Commission, April 1995), p. x.

[44] Ibid., p. 160.

[45] Ibid., p. 162.

[46] *Zuber Report*, p. 202.

[47] Ontario, Ministry of the Attorney General (G. Arthur Martin, Chair), *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (Toronto: The Ministry, 1993), pp. 281, 476, 478.

[48] Ontario, Ministry of the Attorney General (Desmond Ellis), *Family Mediation Pilot Project: Final Report* (Oakville, ON: Ellis Research Associates, July 1994), p. 169.

[49] Ontario, Ministry of the Attorney General, *Annual Report 1993-94* (Toronto: The Ministry, 1994), p. 18.

[50] Ibid.

[51] Ontario Court of Justice, *Practice Direction Toronto Region, Alternative Dispute Resolution*

Pilot Project, February 14, 1994; Alternative Dispute Resolution Centre, *ADR Flash, Ontario Court First*, np,nd.

[52] Ontario, Ministry of the Attorney General, *Estimates Briefing Book 1994 - 95* (Toronto: The Ministry, 1994), pp. 90-92.

[53] Elisabeth Sachs, "Dispute Resolution in a Statutory Accident Benefits Compensation Scheme: The Ontario Model," *Advocates' Quarterly* Vol. 16 (May 1994), pp. 218, 238.

[54] Ibid., p. 221.

[55] H.W. Arthurs, *A Review of Advocacy and Dispute Resolution in the Ontario Automobile Insurance System* (Toronto: Government of Ontario (?), August 1993), p. 37.

[56] R.S.O. 1990, c. P-13; as amended by S.O. 1994, c. 23, s. 39.

[57] S.O. 1994, c. 23, s. 39.

[58] See Ontario Municipal Board, *Annual Report '92-'94* (Toronto: The Board, 1995), p. 10 where mention is made of the OMB's experiment with mediation. See also Robert W. Macaulay and Robert Doumani, *Ontario Land Development: Legislation and Practice*, Vol. 1 (Scarborough: Carswell, 1995), pp. 4-182 to 4-189.

[59] Ontario, Ministry of Municipal Affairs, *1994-95 Estimates Briefing Book* (Toronto: The Ministry, 1994), p. 72; *Ontario Land Development*, pp. 4-190 to 4-193.

[60] Canada, Department of Justice, Research, Statistics and Evaluation Directorate; The Network: Interaction for Conflict Resolution, *Dispute Resolution in Canada: A Survey of Activities and Services* (Ottawa: The Directorate, 1995), p. 44.

[61] Ibid., pp. 43-44. It should be noted that the federal government, through the Treasury Board, formally endorsed ADR in the second half of 1993 or early 1994. Furthermore, a number of intergovernmental agreements concluded have contained dispute settlement mechanisms such as the General Agreement of Tariffs and Trade (GATT).

SELECTED FURTHER READING

General

Canadian

Canada, Department of Justice, Statistics and Evaluation Directorate; The Network: Interaction for Conflict Resolution, *Dispute Resolution in Canada: A Survey of Activities and Services*. Ottawa: The Directorate, 1995.

Cole, Jade C., *Alternative Dispute Resolution Annotated Bibliography*. Rev. Ed. (Technical Report), Ottawa: Department of Justice, April 1993.

Emond, Paul D. "Alternative Dispute Resolution: A Conceptual Overview", in Emond ed., *Commercial Dispute Resolution: Alternatives to Litigation*. Aurora: Canada Law Book Inc., 1989.

Huber, Marc, "Legal Update on Alternative Dispute Resolution." *Canadian Lawyer* 19:1 (January 1995): 36-43.

Ontario, Ministry of the Attorney General, The Hon. Mr. Justice T.G. Zuber, *Report of the Ontario Courts Inquiry*. Toronto: Queen's Printer for Ontario, 1987.

Ontario, Ontario Court of Justice and Ministry of the Attorney General, *Civil Justice Review - First Report.* Toronto: Ontario Civil Justice Review, March 1995.

Ontario, Standing Committee on Administration of Justice, *Alternative Dispute Resolution 1990*. Toronto: The Committee, 1990.

Tannis, Ernest G., *Alternative Dispute Resolution That Works*. North York: Captus Press Inc., 1989.

The Hon. Mr. Justice John Sopinka, "What Can We do to Make the Current System of Dispute Resolution Work Better?" *Canada-United States Law Journal* 17 (1991): 519-532.

The Hon. Mr. Justice George W. Adams and Naomi L. Bussin, "Alternative Dispute Resolution and Canadian Courts: A Time For Change." *Advocates' Quarterly* 17:2 (May 1995): 133-157.

The Law Society of Upper Canada, Dispute Resolution Subcommittee of the Research and Planning Committee, *Final Report to Convocation.* Ontario: The Society, 1993.

Thompson, Bonita J., *Report of the Canadian Bar Association Task Force on Alternative Dispute Resolution: A Canadian Perspective.* Ottawa: Canadian Bar Association and Canadian Bar Foundation, 1989.

American

American Bar Association, The Standing Committee on Dispute Resolution Public Services Division, *The Multi-Door Court House Experience, An Innovative Expansion of Justice*, American Bar Association ed., [1987].

Brazil, Wayne D., "A Close Look at Three Court-Sponsored ADR Programs: Why They Exist, How They Operate, What They Deliver, and Whether They Threaten Important Values." *The University of Chicago Legal Forum* (1990): 303-397.

Center for Public Resources, "Special Issue: A.D.R. in the Courts". *Alternatives to the High Cost of Litigation* 9:7 (July 1991): 93-119.

McGovern, Francis E., "Toward a Functional Approach for Managing Complex Litigation." *University of Chicago Law Review* 53 (1986): 440.

Plapinger, Elizabeth and Margaret Shaw, *Court A.D.R.: Elements of Program Design.* New York: Center for Public Resources, 1992.

Civil And Commercial

Braid, Katharine F., "Arbitrate or Litigate: A Canadian Corporate Perspective." *Canada-United States Law Journal* 17 (1991): 465-480.

Carson, John C., "Dispute Resolution: Negotiation, Mediation and Arbitration in Ontario, What They Are - Where They Are Headed and Why", *Business & the Law.* Four-part article found in 9:10 (October-November 1992); 9:11 (December 1992);10:1 (January 1993); 10:2, (February 1993).

Carson, John C., William C. Graham, and Wayne C. Carson, "Arbitration: The Proof of the Pudding, Results of the Carson/Graham

Commercial Arbitration Survey - 1993", *Business & the Law* 11:3 (April 1994): 1-6.

Carver, Todd B., and Albert A.Vondra, "Alternative Dispute Resolution: Why It Doesn't Work and Why It Does." *Harvard Business Review* (May-June 199): 120-130.

Finkle, Peter and David Cohen, "Consumer Redress Through Alternative Dispute Resolution and Small Claims Court: Theory and Practice." *Windsor Yearbook of Access to Justice* 13 (1993): 81.

Pounsett, Donald F., "Litigation and Alternative Methods of Dispute Resolution in Canada, Part I." *Business & the Law* 8:10 (October 1991): 73-80; "Litigation and Alternative Methods of Dispute Resolution in Canada, Part II." *Business & the Law* 8:11 (November 1991): 81-88.

Roman, Andrew J., "The Role of Public Interest Litigation and Other Alternatives." *Canada-United States Law Journal* 17 (1991): 387-396.

Scalise, David G. and Jeffrey E. Engels, "Alternative Dispute Resolutions: A Commercial Guide for Dispute Management." *Adocates' Quarterly* 9 (1988): 53.

The Hon. Mr. Justice James Farley, "The Commercial List, Practical Comments Including Advice on the ADR/Mediation Initiative." *The Advocates' Society* 12:3 (December 1993): 4-9.

The Hon. Judge R. Bromstein, "Speedier Justice in Civil Disputes, Proactive Judges - A Toronto Experience." *Provincial Judges Journal* 19:1 (Spring 1995): 3.

Thomas, Bruce A., "The Canadian Experience With Alternative Dispute Resolution in Products Liability Cases." *Canada-United States Law Journal* 17 (1991): 363-379.

Totterdill, Brian W., "Does Construction Industry Need Alternative Dispute Resolution?" *Construction Law Letter* 8:4 (March 1992): 7-8.

Motor Vehicle Accidents

Arthurs, H.W., *A Review of Advocacy and Dispute Resolution in the Ontario Automobile Insurance System.* Toronto: Government of Ontario, August 1993.

Ontario Insurance Commission, *Dispute Resolution Practice Code*. Toronto: Queen's Printer for Ontario, 1990.

Ontario Insurance Commission, *Mediation, Finding Solutions Together*. Toronto: The Commission, March 1992.

Sachs, Elisabeth, "Dispute Resolution in a Statutory Accident Benefits Compensation Scheme: The Ontario Model." *Advocates' Quarterly* 16 (1994): 218.

Land Use And Environmental

Emond, Paul D. "Creative Mechanisms for Resolving Environmental Disputes." *Environmental Law Alert* 5:4 (April 1994): 1-3.

Doelle, Meinhard, "Regulating the Environment by Mediation and Contract Negotiation: A Case Study of the Dona Lake Agreement." *Journal of Environmental Law and Practice* 2 (1992):189.

Family

Ellis, Desmond, *Family Mediation Pilot Project Final Report*. Toronto: Ministry of the Attorney General, July 1994.

Mnookin, Robert H., and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce." *The Yale Law Journal* 88 (1979): 950.

Ontario, Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Mediation in Family Law*, February 1989.

Labour And Workplace Disputes

Brown, Donald J.M., "The Adjudication of Labour Relations Disputes in Canada." *Canada-United States Law Journal* 17 (1991): 343.

Ontario Law Reform Commission, *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*, April 1995.

Aboriginal Claims

Jackson, Michael, "In Search of the Pathways to Justice: Alternative Dispute Resolution in Aboriginal Communities."*U.B.C. Law Review (Special Edition)* (1992): 147.

McCallum, Andrea G., "Dispute Resolution Mechanisms in the Resolution of Comprehensive Aboriginal Claims: Power Imbalance between Aboriginal Claimants and Governments." Master of Laws' thesis, Osgoode Hall Law School, York University, North York, Ontario, May 1993.

Criminal

Ontario, Ministry of the Attorney General, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions.* Toronto: Queen's Printer for Ontario, 1993.